



May 10, 2002

Ms. April M. Virnig  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2002-2498

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161891.

The City of Haltom City (the "city"), which you represent, received a request for the personnel files of three employees of the police department. You state that the city has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.115, 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.<sup>1</sup>

We first note that the documents at Tab M include accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the three items of information specified by the

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

statute. *Id.* In this instance, the requestor has not provided the city with two of the three required items of information. Therefore, the city must withhold the peace officers' accident reports under section 550.065(b).

Next, we address your claims under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this case, the release of the Form I-9's at Tab I would be "for purposes other than for enforcement" of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the city must withhold the Form I-9's under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

A W-4 form is confidential under section 6103 of title 26 of the United States Code. Section 6103(a) makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). The city must withhold the W-4 forms at Tab H under section 6103(a) of title 26 of the United States Code.

Title I of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq.*, provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a "fitness for duty examination," conducted to determine whether an employee is still able to perform the essential functions of his or her job, is to be treated as a confidential medical record as well. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). Furthermore, the federal Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). We have marked information at Tab O that the city must withhold under the ADA.

Section 855.115(a) of the Government Code makes confidential "information contained in records that are in the custody of the [Texas Municipal Retirement System] concerning an

individual member, retiree, annuitant, or beneficiary[.]” However, the information at Tab J is not the type of information that is confidential under section 855.115. Therefore, that information is not excepted from disclosure under section 552.101 of the Government Code.

Chapter 1701 of the Occupations Code is applicable to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 1701.306 provides in relevant part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306(a)-(b) (emphasis added). The city must withhold the documents at Tab B under section 1701.306 of the Occupations Code.

Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. *See* Occ. Code § 1703.001. Section 1703.306 of the Occupations Code provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

*Id.* § 1703.306. The documents at Tab F include information acquired from polygraph examinations. The requestor is not a person to whom section 1703.306 grants access to this information. We have marked the information that the city must withhold under section 1703.306 of the Occupations Code.

Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. §20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety (the "DPS") is confidential. *See* Gov't Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, when a law enforcement agency compiles information that depicts an individual as a criminal suspect, arrestee, or defendant, the compilation of information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989);

Open Records Decision No. 616 at 2-3 (1993).<sup>2</sup> Thus, any criminal history information that was obtained from the NCIC or TCIC networks, or that is protected by privacy under *Reporters Committee*, must be withheld from disclosure under section 552.101 of the Government Code.

Common-law privacy under section 552.101 protects information that is (1) highly intimate or embarrassing, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that are deemed to be highly intimate or embarrassing and of no legitimate public interest in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are protected by privacy under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999) (summarizing types of information attorney general has determined to be private); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked information that the city must withhold under section 552.101 in conjunction with common-law privacy.

This office also has determined that although financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, the public has a legitimate interest in the essential facts about a financial transaction between a public employee and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). We have marked the types of personal financial information that are protected by common-law privacy. The city also must withhold these types of information under section 552.101 of the Government Code.

The city also raises section 552.102 of the Government Code. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" This exception is applicable to personnel information that relates to public officials and employees. The test of privacy under

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<sup>2</sup>Section 552.101 of the Government Code also encompasses the common-law right to privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

section 552.102 is the same as the test under section 552.101 in conjunction with common-law privacy. However, because of the greater legitimate public interest in matters involving public officials and employees, privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature." *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Thus, the scope of privacy under section 552.102 is "very narrow." *See Open Records Decision No. 400 at 5 (1983).*

The city claims an exception under section 552.102 with regard to the information at Tab Q. We find, however, that the public has a legitimate interest in that information. Therefore, none of the Tab Q information is excepted from disclosure under section 552.102. *See also* Open Records Decision Nos. 470 at 4 (1987) (public employee's job performance does not generally constitute private affairs), 444 at 3 (1986) (public has obvious interest in information concerning the qualifications and performance of governmental employees involved in law enforcement), 423 at 2 (1984) (information may not be withheld under section 552.102 if it is of sufficient legitimate public interest, even if person of ordinary sensibilities would object to release on grounds that information is highly intimate or embarrassing), 418 at 2 (1984) (information concerning complaints filed by citizens and their resolution by the police department is of special interest to the public).

Next, we address the city's claim under section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" if "release of the internal record or notation would interfere with law enforcement or prosecution" or "the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(1), (b)(2); *see also* Open Records Decision Nos. 628 at 2 (1994) (governmental body must demonstrate that release of information relating to closed case would interfere with law enforcement or crime prevention), 531 at 2 (1989) (statutory predecessor protected records held by law enforcement agency, the release of which would interfere with law enforcement and crime prevention). This office has concluded that section 552.108 protects certain kinds of law enforcement information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 333 (1982) (information that would identify confidential informants), 211 (1978) (information relating to undercover investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment), 127 (1976) (list of persons who entered or left Governor's Mansion).

The city claims an exception under section 552.108 with regard to the information at Tabs P and Q. A governmental body that raises section 552.108 must sufficiently explain, if the information in question does not supply an explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). We find that the city has not demonstrated that any of the information at Tab P is excepted from disclosure under section 552.108. *See also* Open Records Decision Nos. 531 at 3 (1989) (disclosure of generally-known law enforcement policies would not interfere with law enforcement and crime prevention), 252 at 3 (1980) (sheriff failed to identify any specific information, the release of which might adversely affect law enforcement efforts). Likewise, the city has not shown that section 552.108 is applicable to any of the information at Tab Q. *See also Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.--El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). Therefore, the city may not withhold any of the information at Tabs P or Q under section 552.108.

The city also raises section 552.115 of the Government Code. Section 552.115 provides that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure. In this instance, the birth certificates at Tab C are held by the city. Section 552.115 applies only to a birth certificate that is maintained by the bureau of vital statistics or a local registration official. Therefore, the city may not withhold the submitted birth certificates under section 552.115. *See also* Open Records Decision No. 338 (1982).

Section 552.117(2) of the Government Code excepts from disclosure a peace officer's current and former home addresses and telephone numbers, the officer's social security number, and information that reveals whether the officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. In addition to the section 552.117 information that the city has highlighted in the submitted documents, we have marked additional information that the city must withhold under section 552.117(2).

The city also raises section 552.122 of the Government Code. Section 552.122(b) excepts from required public disclosure "a test item developed by a . . . governmental body[.]" In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see*

*also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994). The city raises section 552.122 with regard to the documents at Tab A. We find, however, that this information does not qualify as test items under this exception. Therefore, none of the information at Tab A is excepted from disclosure under section 552.122.

Section 552.130 of the Government Code is applicable to information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). We have marked information relating to driver's license, license plate, and vehicle identification numbers. To the extent that this information relates to Texas driver's license, license plate, and vehicle identification numbers, the marked information must be withheld from disclosure under section 552.130.

Lastly, we note that the information at Tab G includes a bank account number. Section 552.136, which the Seventy-seventh Legislature added to chapter 552 of the Government Code, provides as follows.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the bank account number that the city must withhold under section 552.136.



In summary, the submitted peace officer's accident reports must be withheld from disclosure under section 550.065 of the Transportation Code. The submitted documents also contain information that is confidential under section 1324a of title 8 of the United States Code, section 6103(a) of title 26 of the United States Code, Title I of the Americans with Disabilities Act of 1990 (the "ADA"), section 1701.306 of the Occupations Code, and section 1703.306 of the Occupations Code. The city must withhold all of this information under section 552.101 of the Government Code. Any criminal history information that was obtained from the NCIC or TCIC networks, or that is protected by privacy under *Reporters Committee*, also must be withheld under section 552.101. The city also must withhold the personal financial and other information that is private under section 552.101. Peace officers' home addresses, telephone numbers, and social security numbers, and information that reveals whether a peace officer has family members, must be withheld under section 552.117 of the Government Code. The city must withhold Texas driver's license, license plate, and vehicle identification numbers under section 552.130. The city must withhold the bank account number under section 552.136. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

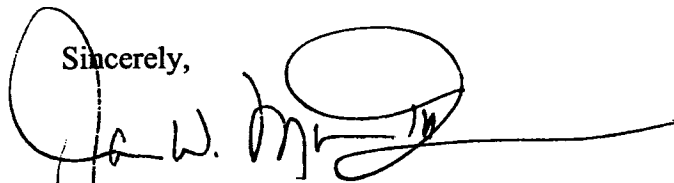
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 161891

Enc: Marked documents

c: Ms. Nancy Williams  
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(w/o enclosures)